

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH CAROLINA

John Noel Turner,	)	
	)	C/A No. 1:11-0957-MBS
Plaintiff,	)	
	)	
vs.	)	
	)	<b>ORDER</b>
Michael J. Astrue, Commissioner of	)	
Social Security,	)	
	)	
Defendant.	)	
_____	)	

Plaintiff John Noel Turner filed the within action on April 21, 2011, seeking judicial review of a final decision of Defendant Commissioner of Social Security denying Plaintiff's application for a period of disability and disability insurance benefits.

In accordance with 28 U.S.C. § 636(b) and Local Rule 73.02, D.S.C., this matter was referred to United States Magistrate Judge Shiva V. Hodges for pretrial handling. On July 25, 2012, the Magistrate Judge issued a Report and Recommendation in which she determined that (1) the rejection of the Administrative Law Judge (ALJ) of the opinions of Eric Winter, M.D. was not based on substantial evidence; (2) the ALJ did not adequately address the opinions of James N. Ruffing, Psy. D., or explain the weight accorded to them; (3) the ALJ engaged in a faulty credibility analysis in discounting Plaintiff's claims of debilitating fatigue and loss of focus; and (4) the ALJ erred in failing to address the lay testimony of Plaintiff's wife. The Magistrate Judge further found that the ALJ's hypothetical to the Vocational Expert was proper, but that the findings of error could impact the ALJ's residual functional capacity determination on remand. For all these reasons, that Magistrate Judge recommended that the matter be reversed and remanded for further proceedings. Plaintiff filed no objections to the Report and Recommendation. On August 10, 2012, the

Commissioner filed a Notice of Not Filing Objections to the Report and Recommendation of Magistrate Judge.

The Magistrate Judge makes only a recommendation to this court. The recommendation has no presumptive weight. The responsibility for making a final determination remains with this court. Mathews v. Weber, 423 U.S. 261, 270 (1976). The court is charged with making a de novo determination of any portions of the Report and Recommendation to which a specific objection is made. The court may accept, reject, or modify, in whole or in part, the recommendation made by the Magistrate Judge or may recommit the matter to the Magistrate Judge with instructions. 28 U.S.C. § 636(b)(1). In the absence of a timely filed objection, a district court need not conduct a de novo review, but instead must “only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.” Diamond v. Colonial Life & Acc. Ins. Co., 416 F.3d 310, 315 (4th Cir. 2005).

The court has carefully reviewed the record and concurs in the recommendation of the Magistrate Judge. The court adopts the Report and Recommendation and incorporates it herein by reference. For the reasons set forth herein and in the Report and Recommendation, the decision of the Commissioner to deny benefits is **reversed** and the action **remanded** under sentence four of 42 U.S.C. § 405(g) for further administrative action.

**IT IS SO ORDERED.**

/s/ Margaret B. Seymour  
Chief United States District Judge

Columbia, South Carolina

August 20, 2012